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In The
Supreme Court of the United States

THOMAS LEE MORRIS and
ELIZABETH S. MORRIS,

Petitioners,

vs.

TANNER, Judge, Judge of the Confederated Salish and Kootenai Indian Tribal Court for the Flathead Reservation, and
UNITED STATES OF AMERICA,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

RESPONDENT CONFEDERATED SALISH AND KOOTENAI TRIBES BRIEF IN OPPOSITION

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QUESTION PRESENTED

The Respondent Confederated Salish and Kootenai Tribes restate the issue before this Court as follows: Whether the Confederated Salish and Kootenai Tribes ("CS&K Tribes") may exercise their inherent authority, as recognized and affirmed by Congress pursuant to 25 U.S.C. §§ 1301-1303, to prosecute a misdemeanor crime committed on the Flathead Indian Reservation by a person who is not an enrolled member of the CS&K Tribes, but who is an enrolled member in another federally-recognized Indian tribe.

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BRIEF IN OPPOSITION

The Respondent Confederated Salish and Kootenai Tribes ("CS&K Tribes") respectfully submit this Brief in Opposition to Petition for Writ of Certiorari filed with this Court on April 6, 2006.

The petition for certiorari should be denied because it presents no issue worthy of this Court's attention. The U.S. Court of Appeals for the Ninth Circuit held that tribal court jurisdiction is proper for prosecution of misdemeanor crimes committed by a person who is not a member of the tribe, but who is an enrolled member of another Indian tribe. The ruling made no new law. To the contrary, the ruling is founded entirely on this Court's decisions in *Morton v. Mancari*, 417 U.S. 535 (1974), *U.S. v. Antelope*, 430 U.S. 641 (1977), and *U.S. v. Lara*, 541 U.S. 193 (2004). By working from such a well-established legal foundation, the court of appeals constructed a ruling that is entirely faithful to this Court's long-standing federal Indian law precedent.

Review should also be denied because there is absolutely no conflict between the federal circuit courts on the question presented. Petitioner concedes this point but seeks to manufacture a conflict regarding the scope of Congress's authority to enact legislation affecting Indians when it acts pursuant to the general Commerce Clause versus when it acts pursuant to the Indian Commerce Clause. Petitioner never raised this issue below and it should be dismissed here as untimely. Further, Petitioner's attempt to manufacture a conflict between the circuit courts is pure conjecture, belied by his failure to offer any supporting law, fact, or research of any kind. Since no

conflict exists on any issue properly raised by Petitioner, review by this Court should be denied.

Finally, the petition for certiorari should be denied because there is nothing novel or extraordinary about this case. This case is about a criminal defendant asserting constitutional challenges of equal protection and due process in an attempt to avoid prosecution of his misdemeanor crimes by an Indian tribal government. Petitioner's assertion that he is raising important unsettled questions of federal law is simply wrong. The court of appeals constructed its ruling through a textbook application of this Court's established precedent regarding the scope of constitutional protection applicable against a tribal government when the tribe exercises its inherent sovereign authority to prosecute criminal acts committed by a non-member Indian on the tribe's reservation. Accordingly, the petition should be denied.

STATEMENT OF THE CASE

The CS&K Tribes do not take issue with the Petitioner's Statement of the Case regarding the procedural background.[1] However, within his statement of the case Petitioner makes misstatements of fact and law, the most significant of which are addressed below.

[1] The CS&K Tribes concur with Petitioner's explanation regarding controlling precedent below to the effect that the Ninth Circuit's decision in this case was dictated by its decision in *Means v. Navajo Nation*, 432 F.3d 924 (2005), Pet. at App. 57-79, and therefore will herein adopt Petitioner's approach for citation to the lower court's opinion via reference to the Ninth Circuit's *Means* opinion.

Petitioner misstates the facts of this case by repeatedly making express and implied assertions that the Congress and Indian tribes are mistreating nonmember Indian people in a way that violates their constitutional rights. Petitioner is an enrolled member of the Minnesota Chippewa Tribe, Leech Lake Band, who has come to live in the community of the CS&K Tribes. As a member of the Flathead Reservation community, he is provided with many opportunities and services that the CS&K Tribes make available to all Indians, including, among other things: health services, housing, educational opportunities, job training programs, employment, public transportation, public assistance, and commodities. Most relevant to this case, the CS&K Tribes provide law enforcement services to all residents of the Flathead Reservation. The CS&K Tribal Law & Order Department provides police protection to all residents of the Flathead Reservation. The CS&K Tribal Prosecutor prosecutes misdemeanor criminal charges against all Indian defendants. The CS&K Tribal Defender provides attorney services to Indian defendants.[2] The CS&K Tribal Court adjudicates cases involving all Indian defendants and incorporates social and health services from CS&K Tribal agencies in sentencing. All of these services are provided to individual Indians without distinction for tribal membership.[3]

The CS&K Tribes have developed an integrated contemporary criminal justice system that is consistent with federal law. The CS&K Tribal government, in its

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[2] App. 1 (Affidavit of James Taylor, Managing Attorney of the CS&K Tribal Defender's Office).

[3] App. 7 (Affidavit of CS&K Tribes Acting Chief Judge Gary L. Acevedo).

present form, was established on October 28, 1935 pursuant to the Indian Reorganization Act of 1934, 48 Stat. 987 (1934), 25 U.S.C. § 476. Pursuant to its federally approved Constitution,[4] the Tribal Council enacted law to govern misdemeanor criminal acts committed by Indians on the Flathead Reservation[5] and vested the judicial power for prosecuting such criminal acts in the CS&K Tribal Court.[6] For traffic offenses, like the Petitioner's, the Tribes have adopted the applicable sections of the Montana Code including exceeding the speed limit.[7] The CS&K Tribal criminal system is implemented consistent with a three government criminal enforcement agreement between the CS&K Tribes, the state of Montana (and its sub-entities), and the United States.[8]

The district court below developed a record that shows the CS&K Tribal government is providing all of the above services to Petitioner in a manner that is consistent with federal law. The court of appeals accepted the district court's factual determination. Petitioner, however, continues to

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[4] CS&K Tribes' Const. Art. VI, sec. 1(l), App. 18-20.

[5] Tribal Ordinance 36B, September 14, 1982, subsequently amended to be included in Title II of CSKT Laws Codified by Tribal Ordinance 103A, December 9, 1999.

[6] CSKT Laws Codified § 1-2-101.

[7] CSKT Laws Codified § 2-1-1301(a).

[8] *See* Memorandum of Agreement for Retrocession of Criminal Misdemeanor Jurisdiction Between the State of Montana, et al., and the Confederated Salish and Kootenai Tribes, September 30, 1994, ("Law enforcement officers will determine the Indian/non-Indian status of a suspect at the crime scene as soon as reasonable after providing any emergency law enforcement services and securing public safety. For purposes of the Agreement an 'Indian' is a person who is an enrolled member of a federally-recognized tribe.") App. 34; *see also* 60 Fed. Reg. 33318, June 27, 1995.

assert that Congress and Indian tribes treat him, and all nonmember Indians, as individuals who are members of an "overlooked" racial group consisting largely of "homeless" "fringe-dwellers" and enduring socioeconomic conditions "similar to that of indigent criminal defendants" and World War II Japanese-American internees. Pet. at 18-19. The Petitioner's circumstances are nothing like the conditions of the disadvantaged persons he seeks to assert for purposes of his case. He attempts to disguise himself as one of them because his own conditions simply do not provide the factual support he needs to sustain his legal argument. There is no evidence on the record to the contrary. Both courts below fully considered his arguments in light of the facts on the record and rejected them based on the relevant precedent of this Court. Accordingly, there is no judicial error or oversight for this Court to correct.

Petitioner misrepresents the CS&K Tribes' position regarding the scope of the Tribes' criminal jurisdiction by asserting the Tribes' position to be that the 1990 amendments[9] to the Indian Civil Rights Act of 1968 ("ICRA"), 25 U.S.C. §§ 1301-1303, "swept into the Tribes' criminal jurisdiction Indians who are enrolled members of a tribe and perhaps other racial 'Indians,' but not all Indians." Pet. at 5 ¶ 1. This statement misrepresents the governmental practice of the CS&K Tribes and attempts to interject a racial element into his argument that does not arise from the facts of this case. The CS&K Tribes have consistently exercised criminal jurisdiction based solely on whether a defendant is enrolled in a federally recognized

[9] Pub.L.No. 101-511, 104 Stat. 1856 (1990), made permanent by Pub.L.No. 102-137, 105 Stat. 646 (1991), codified at 25 U.S.C. §§ 1301-1303.

tribe. That has been and continues to be the CS&K Tribes' policy and practice as memorialized in several cooperative agreements between the CS&K Tribes and other federal, state, and local law enforcement agencies.[10] In effectuating this policy, the CS&K Tribes sought evidence regarding whether Petitioner was a member of a federally-recognized tribe in order to determine jurisdiction for prosecution of his misdemeanor criminal charge. The CS&K Tribes never sought nor developed evidence regarding Petitioner's race or ethnicity because such information is not relevant to this case. Accordingly, the petition should be denied because there is no new law in the circuit court's ruling regarding "racial Indians" and neither the Petitioner nor any other person has been redirected to tribal jurisdiction by that ruling.

Petitioner misleads the Court by implication when he states that the 1990 ICRA amendments were initially enacted by Congress "without holding a hearing." Pet. at 9 ¶ 2. Although factually accurate, this implies that Congress never received input from stakeholders prior to enacting legislation in response to this Court's decision in *Duro v. Reina,* 495 U.S. 676 (1990). The implication is misleading. Although Congress acted quickly in response to *Duro*, it took care to incorporate a one-year sunset clause in its legislation and then held extensive hearings prior to enacting permanent legislation.[11] Furthermore, the record of the Senate Select Committee on Indian Affairs is replete with references regarding non-member Indians, including: supporting testimony from Petitioner's

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[10] *Supra* at footnote 8.

[11] H.R. Conf. Rep. No. 101-938, pt. 3 (1990) 136 Cong. Reg. H13596 (daily ed. Oct. 24, 1990); S. Rep. No. 102-153, at 12 (1991).

tribe,[12] and cautionary testimony from a tribal watchdog public interest group in which Petitioner's father was an officer.[13] The testimony of all of these people addressed the status of non-member Indians. As a result, Congress was well advised of the civil rights of non-member Indians regarding tribal government at the time it enacted the 1990 ICRA amendments. This Court should not be persuaded to provide judicial review to Petitioner based on his misleading statements to the contrary.

Petitioner asserts that this Court's decisions regarding the Indian Major Crimes Act, 18 U.S.C. § 1153, "make it clear that the primary, indispensable and immutable factor for classification as an 'Indian' is racial." Pet. at 9-10. This assertion is conclusory, unsubstantiated, and false. Although there may be a racial element to determinations made under the definition of "Indian" in the Major Crimes Act for federal jurisdiction purposes, that definition is not the law being applied by the CS&K Tribes for determining jurisdiction in this case. The CS&K Tribes are asserting jurisdiction over Morris based on his political status as a member of a federally-recognized Indian tribe, not because of his race. Both the district court and the court of appeals were fully cognizant of the collateral

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[12] Hearing before the Select Committee on Indian Affairs, Senate on S. 962 To Make Permanent the Legislative Reinstatement, Following the Decision of Duro Against Reina (58 U.S.L.W. 4643, May 29, 1990) of the Power of Indian Tribes to Exercise Criminal Jurisdiction Over Indians, 102nd Cong., 1st Sess. 30-34, Part 1, 155-160 (1991) (testimony of DeAnna Fairbanks, Chief Judge, Minnesota Chippewa Tribal Court).

[13] *Id.*, Part 2 at 21-23 (testimony of Fred Hatch, Citizen Equal Rights Alliance); Plaintiff-Appellant below Roland Morris (now deceased) was identified as Secretary of the organization (http://citizensalliance.org/links/pages/frames/who_we_are.html).

issues regarding the Major Crimes Act and took care to first ascertain that Petitioner's Indian status was derived from his membership in a federally-recognized tribe before concluding that he was subject to tribal jurisdiction because of this political status, not because of his race. *Morris v. Tanner*, 288 F.Supp.2d 1133, 1135, 1141-1142 (D.Mont. 2003), Pet. at App. 6 ¶ 1, 19-23; *Means*, 432 F.3d at 927, 933, Pet. at App. 59, 64-66, 73-74. Thereafter, both courts also specifically addressed his assertion that Indian status is "immutable" by noting that tribal membership was a voluntary status that could be renounced. *Morris* at 1141, Pet. at App. 19-20, 22; *Means* at 934, Pet. at App. 73-75. As a result, the Court should deny the petition because it contains no substantiated issues regarding either the Major Crimes Act or "immutable" racial determinations.

Petitioner represents to the Court that he will be "prosecuted in state district court . . . if this Court rules in his favor." Pet. at 13 ¶ 2. He is wrong. The Flathead Reservation is a Public Law 280 ("PL 280"), 67 Stat. 588 (1953), jurisdiction in which partial criminal jurisdiction was retroceded by the Montana legislature to the CS&K Tribes. Congress enacted PL280 to allow concurrent state-tribal criminal jurisdiction in Indian country, then subsequently amended PL 280 to provide for retrocession of state criminal jurisdiction to tribes.[14] The state of Montana assumed PL280 jurisdiction for the Flathead Reservation from the U.S. in 1965,[15] then subsequently retroceded its misdemeanor criminal jurisdiction to the CS&K Tribes in

[14] Pub.L.No. 90-234, Title IV, § 403, April 11, 1968, 82 Stat. 79 (1968), codified at 25 U.S.C. § 1323.

[15] Mont. Code Ann. § 2-1-301.

1994,[16] and thereafter recognized and affirmed exclusive CS&K Tribal jurisdiction over "Indians committing misdemeanor criminal offenses within the external boundaries of the Flathead Indian Reservation."[17] Consequently, state courts do not have jurisdiction over Morris's alleged offense. If federal courts have such jurisdiction, then it is unlikely any federal prosecution will ensue either because the federal system does not have adequate resources to prosecute misdemeanor criminal offenses on the Flathead Reservation.[18] So, if Morris is not prosecuted in the CS&K Tribal court, then he will not be prosecuted in any court. See *State of Montana v. Greenwalt,* 663 P.2d 1178 (Mont. 1983); see also *Kennerly v. District Court of Ninth J.D. of Montana,* 400 U.S. 423, 428-429 (1971). This jurisdictional void is unique to the Flathead Reservation due to its status as a partial PL280 reservation. The record of this case is not well developed regarding the other predominant type of jurisdictional void (discussed below) that would be created throughout Indian country if this Court were to grant review and rule in Petitioner's favor. Accordingly, the petition should be denied because it only addresses questions of unique and limited application.

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[16] Mont. Code Ann. § 2-1-306.

[17] Proclamation of the Governor of Montana, September 30, 1994, App. 57-58.

[18] Hearing before the Committee on Interior and Insular Affairs, House of Representatives on H.R. 972 To Make Permanent the Legislative Reinstatement, Following Decision of Duro Against Reina (58 U.S.L.W. 4643, May 29, 1990) of the Power of Indian Tribes to Exercise Criminal Jurisdiction over Indians, 102nd Cong., 1st Sess. 11 (1991) (statement of Ronal D. Eden, Office of Tribal Services, U.S. Department of the Interior).

REASONS FOR DENYING THE PETITION

I. The Court Should Deny Review Because Tribal Prosecution of the Petitioner Does Not Violate the Equal Protection Component of the Fifth Amendment

There are only three facts, each simple and straightforward, that are relevant to Petitioner's equal protection claim. First, Petitioner is a member of a federally-recognized Indian tribe. Pet. at App. 41 ¶ 3. Second, he is charged with committing a misdemeanor criminal offense on the Flathead Indian Reservation. Pet. at App. 42 ¶ 8. Third, he is being directed to the CS&K Tribal Court for prosecution of his misdemeanor charge because he is a member of a federally-recognized tribe. Pet. at App. 43, 48. These facts are real, are substantiated by evidence on the record, and are uncontroverted.

Petitioner can not prevail based on these facts, however, so he attempts to present an alternative set of convoluted facts. First, he attempts to disguise himself as either a non-Indian or an ethnic Indian who is not a member of any federally-recognized tribe. Pet. at 15 ¶ 3, 17 ¶ 1. Second, he insinuates that his circumstance is akin to a person charged with a felony crime who could end up "languishing in [a] tribal jail facilit[y]." Pet. at 17 ¶ 1. Third, he insists that he is being directed to the CS&K Tribal Court on the basis of his race, not on the basis of his membership in a federally-recognized tribe. Pet. at 15 ¶ 1, 18-19. These facts are hypothetical, unsubstantiated, and controverted by the record in this case.

This Court should not allow Petitioner to manufacture an equal protection issue where there is none. It would be particularly unjust to do so when, as here, the Petitioner's

allegations are controverted by his own pleadings. In his Complaint, Petitioner admits he is a tribal member. Pet. at App. 41 ¶ 3. He describes the charge against him using the parameters of a misdemeanor offense. Pet at App. 42 ¶ 8, 43 ¶ 13. He admits that he was "asked by the officer whether he is a tribal member" and then responded "that he is a tribal member of a tribe in Minnesota, to wit, the Leech Lake Band of Chippewa." Pet. at App. 43 ¶ 10. The criminal citation affirms these facts by directing Petitioner to CS&K Tribal court because he was a "tribal member from Minn. (Cree)" and identifying the potential penalty as "$100.00". Pet. at App. 48. This evidence alone belies Petitioner's claim that he is being prosecuted in the CS&K Tribal court due to his race and affirms that he is being prosecuted because of his political status as an Indian resulting from being an enrolled member of a federally-recognized tribe. The Court should deny the petition, because there is nothing novel or extraordinary about this case.

There is a major constitutional distinction in the manner in which the federal government deals with Indians. Congress and the courts have created an entire body of law (i.e., Title 25 U.S.C.) dealing with Indians as "Indians". This treatment has led to challenges similar to Petitioner's that legislation differentiating Indians from others violated the due process and equal protection principles of the Fifth Amendment. These challenges have been uniformly rejected by this Court. See *U.S. v. Antelope*, 430 U.S. 641, 642-650 (1977); *Fisher v. District Court*, 424 U.S. 382, 390-391 (1976); *Morton v. Mancari*, 417 U.S. 535, 552-554 (1974); See also *U.S. v. Lara*, 541 U.S. 193, 205 (2004). In *Mancari* this Court rejected the claim of unconstitutional discrimination by ruling that an individual's status

as an "Indian" under federal and tribal law is not racial. The status is not taken by "a 'racial' group consisting of 'Indians', instead, it applies only to members of 'federally recognized tribes.' . . . In this sense, the preference is political rather than racial in nature." *Id.* at 552-554, n. 24; See *Antelope*, 430 U.S. at 646 (1977). Therefore, the petition should be denied because the courts below issued rulings that are entirely faithful to this Court's long-standing federal Indian law precedent.

CS&K Tribal law is consistent with federal law in that it applies political criteria for establishing Indian status for criminal jurisdiction purposes. Indian status for purposes of CS&K Tribal criminal jurisdiction requires that a suspect be "an enrolled member of a federally-recognized tribe."[19] Indian status for purposes of federal criminal jurisdiction requires voluntary membership or affiliation with a federally recognized tribe. See *LaPier v. McCormick*, 986 F.2d 303, 305 (9th Cir. 1992); *United States v. Heath*, 509 F.2d 16, 19 (9th Cir. 1974); see generally S.Rep. 102-168, 102nd Cong., 1st Sess. App. C, pp. 48-54 (1991). For equal protection purposes, therefore, the classification of "Indian" for determining either Tribal or federal criminal jurisdiction is one based on political affiliation with a tribe, not one based on race. See *Antelope*, 430 U.S. at 645-650. Thus, the petition should be denied because there is no constitutional question regarding equal protection that arises from the facts of this case.

Petitioner's evidentiary burden in this case is substantial because, as he points out, there are 556 federally-recognized tribes, and he must address the enrollment and

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[19] *Supra* at footnote 8.

judicial practices of each and every one. Pet. at 17 ¶ 2. He must do so because he has raised his challenge to tribal jurisdiction as a facial challenge to a federal statute. "A facial challenge to a legislative act is, of course, the most difficult challenge to mount successfully, since the challenger must establish that no set of circumstances exists under which the Act would be valid." *United States v. Salerno,* 481 U.S. 739, 745 (1987). To demonstrate that "no set of circumstances" exists requires proof that each and every statutory application would be unconstitutional.[20] Petitioner only cursorily attempts to meet his evidentiary burden by presenting selected excerpts of the CS&K Tribes enrollment rules, but presents nothing regarding the remaining 555 federally-recognized tribes. Accordingly, the petition should be denied because Petitioner provides little or none of the evidence necessary to sustain his burden for supporting a facial challenge to a federal statute.[21]

II. The Court Should Also Deny Review Because Tribal Prosecution of the Petitioner Does Not Violate the Due Process Clause of the Fifth Amendment.

The Petitioner insists that there is a "compelling" due process question in his case. Pet. at 15 ¶ 2. He also insinuates that tribal courts are unfair tribunals that need the review of this Court together with a larger group of extraconstitutional

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[20] Michael C. Dorf, Facial Challenges to State and Federal Statutes, 46 Stan.L.Rev. 235, 236 (1994).

[21] Even if Petitioner had adduced evidence in support of his equal protection claim, in order for him to prevail he must show that the prosecution has "a discriminatory effect and is motivated by a discriminatory purpose." *U.S. v. Armstrong*, 517 U.S. 456, 465 (1996); quoting *Wayte v. United States*, 470 U.S. 598, 608 (1985).

sovereign powers, including unidentified foreign governments. Pet. at 15 ¶ 2, 16 ¶ 4, 17 ¶ 1. Yet, he again fails to provide any of the evidence that would be necessary to sustain a "facial" due process challenge.[22] He presents nothing regarding the structure and laws of tribal criminal justice systems nationwide nor the nature of due process protections provided by tribal courts nationwide. He simply asserts that nonmember Indian criminal defendants can not participate in tribal juries or in tribal political life and implies that tribal governments are one of a class of "extraconstitutional sovereigns." Pet. at 16 ¶ 4, 17 ¶ 1. He does so to insert doubt in the mind of this Court regarding the capability of tribal courts to provide adequate due process and to insert intrigue into the case by implying that tribal courts are akin to shadowy courts of ominous foreign sovereigns. The petition should be denied because both points are unsubstantiated and false.

Both of the lower courts, for purposes of organizing their opinions, accepted that Petitioner had raised a cognizable facial due process claim but summarily rejected his claim after considering the due process protections available to nonmember Indians. Both courts applied this Court's precedent in *Santa Clara Pueblo v. Martinez,* 436 U.S. 49, 56 (1978) to recognize that, although tribes' powers are not subject to the limitations of the Fifth and Fourteenth Amendments of the Constitution, the Congress, by enacting the ICRA, has stepped in to guarantee citizens adequate protection from tribal government action. The court of appeals concluded that the ICRA

[22] Because the CS&K Tribal Court has stayed proceedings in Petitioner's prosecution pending final resolution of the federal court proceedings, an "as applied" due process challenge would be premature.

conferred all of the criminal protections to Petitioner that he would receive under the Constitution except the right to grand jury indictment and the right to appointed counsel if he could not afford an attorney. The court then further concluded that the right to grand jury did not pertain because the Petitioner was charged with a misdemeanor and that the right to appointed counsel was adequately addressed by tribal provision of a right to appointed counsel.[23] Thus, either Congress or the CS&K Tribes are already providing Petitioner with the protections he seeks.[24] Accordingly, the petition should be denied because the courts below properly evaluated Petitioner's due process claim and rejected it after applying the relevant federal statutes faithfully to this Court's precedent.

This Court has previously been presented with opportunities to adopt Morris's argument regarding his due process rights, but has not. *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191 (1978). The Court had its most recent opportunity in *U.S. v. Lara*, where it upheld tribal criminal jurisdiction over nonmember Indians, and ruled that a subsequent prosecution by the federal government does not violate the double jeopardy clause of the U.S. Constitution

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[23] *Supra* at footnote 8.

[24] Petitioner has other remedies available to him in the event of defect in the procedures of a tribal court, including: due process rights in the form of judicial review in both Tribal and federal courts regarding how the Tribal court applies the 1990 ICRA Amendments against him (i.e., an "as applied" challenge); a unique right derived from his membership in the Leech Lake Band of Chippewa to petition the President for redress of any grievances he may have against the CS&K Tribes pursuant to Article 9 of the Treaty with the Chippewa on February 22, 1855, 10 Stat. 1165 (the process for such a petition is provided through the Department of the Interior at 25 U.S.C. § 2 and 25 C.F.R. Part 2).

because an Indian tribe is "acting in its capacity of a separate sovereign." *Id.* at 210. Of critical importance, the decision upholds Congressional authority to reaffirm the inherent sovereignty of Indian tribes. The Court held that "the Constitution authorizes Congress to permit tribes, as an exercise of their inherent tribal authority, to prosecute nonmember Indians." *Ibid.*

In *Lara,* however, the Court expressed a concern regarding an indigent person's right to counsel being protected in tribal courts. *Id.* at 207. The implication is that the Court may review a future case where a non-member Indian has been denied adequate protection of her or his fundamental rights as a criminal defendant under the U.S. Constitution. The Petitioner's case does not raise any of these issues for review. He alleges no criminal due process irregularities in his prosecution, nor could he. This was a simple traffic misdemeanor for exceeding the speed limit, and he has been afforded an opportunity for a hearing and to confront and question the charging police officer. He has counsel. He is not subject to an excessive fine. Accordingly, the petition should be denied because there are no due process irregularities in Petitioner's case.

III. Tribal Criminal Justice Systems, As Developed by Congress and this Court, Are Working To Ensure the Health, Safety and Welfare of All Indian Reservation Residents.

Finally, the petition should be denied because it threatens to destroy a functional jurisdictional system for governing misdemeanor crime in Indian country that the Congress and this Court have interdependently developed. The present system preserves tribal misdemeanor criminal jurisdiction over Indians while precluding tribal

criminal jurisdiction over non-Indians. *Oliphant,* 435 U.S. at 212. It recognizes the capability of tribal courts, but places them subject to the due process protections of the ICRA. It recognizes the complex social, cultural and jurisdictional character of Indian reservations. *Ibid.* As a result, the Court and Congress have developed a criminal jurisdiction system for Indian country that provides for the health and safety of all Indian reservation residents while simultaneously providing adequate due process to Indian criminal defendants. This Court should leave that system intact. If it doesn't, then it will open a jurisdictional void throughout Indian country as a result of its ruling's impact on three federal statutes. The Indian Country General Crimes Act, in pertinent part, proscribes federal jurisdiction over "offenses committed by one Indian against the person or property of another Indian." 18 U.S.C. § 1152. The Indian Major Crimes Act imposes federal criminal jurisdiction over fourteen enumerated major crimes, but does *not* include misdemeanor crimes. 18 U.S.C. § 1153. The Assimilative Crimes Act permits the federal government to apply minor state criminal laws and thereby assume jurisdiction over certain misdemeanor offenses, but since the Assimilative Crimes Act is made applicable to Indian reservations through the General Crimes Act, it does not include misdemeanor offenses committed by one Indian against the person or property of another Indian. 18 U.S.C. § 13. As a result, if an Indian commits a misdemeanor crime against another Indian on a non-PL280 reservation, then there is no law to punish the offense except the law of the tribes. See *Keeble v. U.S.*, 412 U.S. 205, 210-212 (1973); *Ex Parte Crow Dog*, 109 U.S. 556, 571 (1883); see also *United States v. Errol D. Jr.*, 292 F.3d 1159, 1161-1162 (9th Cir. 2002). Therefore, the practical result of finding in favor of Morris would be to create a

jurisdictional void throughout Indian country regarding misdemeanor crime.[25] The petition should be denied to avoid creating such a dangerous situation.

CONCLUSION

For the reasons set forth above, the Petition for Certiorari should be denied.

Respectfully submitted,

JOSEPH P. HOVENKOTTER
(*Counsel for Respondent*)

June 2006

[25] S. Rep. 168, 102nd Cong., 1st Sess. 4 (1991); H.R. Rep. 61, 102nd Cong., 1st. Sess. 3-4 (1991).

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

THOMAS LEE MORRIS, a minor child, by and through his guardians, his natural parents, ELIZABETH S. MORRIS and ROLAND J. MORRIS, SR., Plaintiff, v. Judge Tanner, Judge of the CONFEDERATED SALISH AND KOOTENAI INDIAN TRIBAL COURT for the FLATHEAD INDIAN RESERVATION, Defendant, and UNITED STATES OF AMERICA Intervenor.	**CV 99-82-M-DWM** **Affidavit of James Taylor, Managing Attorney of the Tribal Defenders Office**

Being first duly sworn, James Taylor, Managing Attorney of the Confederated Salish and Kootenai Tribal Defenders Office, and a member of the State Bar of Montana admitted to practice in the United States Federal District Court, depose and say that from personal experience and diligent record keeping I have good grounds upon which to state the following:

1. By Tribal Ordinance, this Office offers representation to all indigent defendants accused in the Tribal Court of criminal offenses punishable by imprisonment. A person is considered indigent if they make less than 200% of the current standard for poverty, as contained in the Federal Poverty Income Guidelines. We offer these services without charge to all indigent defendants, regardless of where they are enrolled. There are four attorneys and one advocate that handle criminal cases in the Tribal Court. This Office makes contact with all individuals charged with criminal offenses, and makes an eligibility determination before an individual's initial appearance. For those we represent, we appear with them beginning at their initial appearance. If there is no possibility of a jail sentence, a defendant still has the right to counsel at his own expense, but not to appointed counsel.

2. During calendar year 2001 the Tribal Defender's Office undertook representation of 746 total individuals in criminal cases including 1329 criminal charges. Of the 746 total individuals, 553 (74%) were enrolled members of the Confederated Salish and Kootenai Tribes ("Tribes"), and 193 (26%) were members from other tribes.

3. During calendar year 2000 the Tribal Defender's Office undertook representation of 828 total individuals in criminal cases including 1557 criminal charges. Of the 828 total individuals, 608 (73%) were enrolled members of the Tribes, and 220 (27%) were members of other tribes.

4. During calendar year 1999 the Tribal Defenders Office undertook representation of 912 total individuals in criminal cases. Of that total, 639 (70%) were enrolled members of the Tribes, and 273 (30%) were members from other tribes.

5. During calendar year 1998 the Tribal Defenders Office undertook representation of 923 total individuals in criminal cases. Of that total, 689 (75%) were enrolled members of the Tribes, and 234 (25%) were members from other tribes.

6. During calendar year 1997 the Tribal Defenders Office undertook representation of 831 total individuals in criminal cases. Of that total, 575 (69%) were enrolled members of the Tribes, and 256 (31%) were members from other tribes.

7. During calendar year 1996 the Tribal Defenders Office undertook representation of 747 total individuals in criminal cases. Of that total, 551 (74%) were enrolled members of the Tribes and 196 (26%) were members from other tribes.

8. From the foregoing information, it appears that the criminal caseload of the Tribal Defenders Office has been composed of approximately 70-75% people from these Tribes, with the balance of 25-30% composed of people from other tribes.

Dated this 9th day of July, 2002.

/s/ James Taylor
James Taylor
Managing Attorney –
Tribal Defenders Office

ACKNOWLEDGMENT

STATE OF MONTANA)

ss.

COUNTY OF LAKE

On this 9th day of July, 2002, before me Susie Loughlin, a Notary Public for the State of Montana, personally appeared James Taylor, known to me to be the person whose name is subscribed to the above Affidavit, and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have set my hand and affixed my official seal.

/s/ Susie Loughlin

Notary Public for the State of Montana

Residing at St. Ignatius

My Commission expires 12-16-04

Joseph P Hovenkotter
CONFEDERATED SALISH AND KOOTENAI TRIBES
Tribal Legal department
P. O. Box 278
Pablo, Montana 59855
(406) 675-2700

ATTORNEY FOR TRIBAL GOVERNMENTAL DEFENDANT

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION**

THOMAS LEE MORRIS, a minor child, by and through his guardians, his natural parents, ELIZABETH S. MORRIS and ROLAND J. MORRIS, SR.,	CV 99-82-M-DWM
Plaintiff,	
v.	AFFIDAVIT OF ACTING CHIEF JUDGE GARY L. ACEVEDO AND ATTORNEY LAW CLERK ROBERT J. STAHL
Judge Tanner, Judge of the CONFEDERATED SALISH AND KOOTENAI INDIAN TRIBAL COURT for the FLATHEAD INDIAN RESERVATION,	
Defendant.	

Being first duly sworn, Gary L. Acevedo, Acting Chief Judge of the Confederated Salish and Kootenai Tribal Court, and Robert J. Stahl, Attorney Law Clerk to the Tribal Court and a member of the State Bar of Montana

admitted to practice in the United States Federal District Court, depose and say that from personal experience and diligent inquiry with Tribal Department Heads and other responsible Tribal employees in a position to provide accurate information regarding the matters addressed, we have good reason to make the following representations:

1. Law and Order on the Flathead Reservation would be severely impaired without Tribal jurisdiction over misdemeanors committed by non-member Indians on the Reservation. Without Tribal jurisdiction, non-member Indians would not be held accountable for their misdemeanors. Without Tribal jurisdiction, a rapid increase in non-member Indian misdemeanors seems certain. Most non-member Indians are socially integrated into the reservation Indian community and, consequently, most victims of Indian misdemeanors are other Indians. When non-member Indians commit crimes like domestic abuse, assault, or theft, their victims are other Indians. However, the victims of drunk driving are not restricted to the Indian community but are whoever happens to be on the highway or road at the time.

2. Before the imposition of supervision by the Bureau of Indian Affairs, the Salish and Kootenai customarily treated non-Salish and non-Kootenai Indians living in their midst just as they treated one another. Federal supervision of reservation Indian populations and the allotment process created the tribal enrollment distinction. Previously, membership was a practical reality. If a person lived within an Indian community and participated in its daily life, the person was a member of the community. That person's ancestry may have been relevant to selection for a leadership role but it was not a basis for exclusion from community life or participation in civic

debate. All persons living in the community and participating in community life were held to the same social and moral standards and their transgressions were dealt with in the same fashion. There was no separate justice for visitors or those recently joining the community.

3. Most services provided by the Confederated Salish and Kootenai Tribes (CSKT) are available to all enrolled tribal members of federally recognized tribes without distinction. Very few services are restricted to CSKT members. Non-member Indians comprise a significant percentage of the population served by most CSKT programs and services.

CSKT DEPARTMENT	PROGRAM	INDIAN SERVICE POPULATION	NON-MEMBER INDIANS SERVED (estimates of % of total population served provided by individual Tribal Departments)
Tribal Personnel	Tribal Employment	all but w/Tribal preference	10-15 %
Tribal Court	Civil Adjudication (marriage, divorce, custody, protective orders, civil suit, small claim, fish & game citation)	all w/out distinction	40 % (133 parties in actions filed thus far in 2002)

Tribal Prosecutors	Crime Victims Advocate	all w/out distinction	35 %
Salish Kootenai College	academic & vocational	all w/out distinction	30-35 % (300-350 students)
Kicking Horse Job Corps	Job Corps	all w/out distinction	100 % (245 youths)
Tribal Human Resource Development	TANF (AFDC)	one family member must be enrolled CSKT	40 %
	Child Care	all w/out distinction	25 %
	General Assistance	all w/out distinction	25 %
	Vocational Rehab.	all w/out distinction	20-25 %
	Senior AOA	all w/out distinction	15-20 %
	Commodities	all w/out distinction	15 %
	Kerr Elderly	CSKT exclusive	0 %
	Dire Need	CSKT exclusive	0 %
	Youth Employment	CSKT exclusive	0 %
	Dislocated Workers	CSKT exclusive	0 %
	Senior Meals	all w/out distinction	40 %

	Computer Education	all w/out distinction	10 %
	Trust Management	all w/out distinction	10 %
	Workforce Investment Act	all w/out distinction	20 %
	Care Givers	all w/out distinction	10 %
	Parenting	all w/out distinction	20 %
	WIC	all w/out distinction	10 %
	DOL Temporary Fire	CSKT exclusive	0 %
	Energy Assistance	all w/out distinction	15-20 %
Tribal Head Start	Early Childhood	all w/out distinction	14 %
Tribal Social Services	Child Welfare, Child Protective Services, Foster Care	all w/out distinction	5-10 %
Tribal Health/IHS	Rx & Med. Services	all w/out distinction	32 % (3,588 Patients)
	Mental Health	all w/out distinction	10-20 %
Tribal Housing Authority	NAHSDA & Willow Inn Trailer Park	preference to families w/at least one member enrolled CSKT	5-10 %

DATED this 28th day of May, 2002.

BY: /s/ Gary L. Acevedo
Gary L. Acevedo
Acting Chief Judge of Tribal Court

BY: /s/ Robert J. Stahl
Robert J. Stahl
Attorney Law Clerk to Tribal Court

ACKNOWLEDGMENT

STATE OF MONTANA)
: ss.
COUNTY OF LAKE)

On this 28 day of May, 2002, before me Karen L. Fisher, a Notary Public for the State of Montana, personally appeared Gary L. Acevedo and Robert J. Stahl, known to me to be the persons whose names are subscribed to the above instrument, and acknowledged to me that they both executed the same.

IN WITNESS WHEREOF, I have set my hand and affixed my official seal.

/s/ Karen L. Fisher
Notary Public for the State of Montana
Residing at Ronan
My Commission expires 3-17-06

(SEAL)

TITLE I

CHAPTER

CONSTITUTION AND BYLAWS

Part 1

Constitution of the Confederated Salish and Kootenai Tribes of the Flathead Reservation, as Amended

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TITLE I

CHAPTER 1

CONSTITUTION AND BYLAWS

Part 1

Constitution of the Confederated Salish and Kootenai Tribes of the Flathead Reservation, as Amended

Preamble

We, the Confederated Salish and Kootenai Tribes of the Flathead Reservation, Montana, in order to establish a more responsible organization, promote our general welfare, conserve and develop our lands and resources, and secure to ourselves and our posterity the power to exercise certain rights of self-government not inconsistent with Federal, State, and local laws, do ordain and establish this Constitution for the Confederated Tribes of the Flathead Reservation.

Article I

Territory

The jurisdiction of the Confederated Salish and Kootenai Tribes of Indians shall extend to the territory within the original confines of the Flathead Reservation as defined in the Treaty of July 16, 1855, and to such other lands without such boundaries, as may here-after be added thereto under any law of the United States, except as otherwise provided by law.

Article II

Membership

Section 1. Confirmation of Rolls. The membership of the Confederated Tribes of the Flathead Reservation is confirmed in accordance with the per capita rolls as from time to time prepared.

Section 2. Present Membership. Membership in the Tribes on and after the date of the adoption of this amendment shall consist of all living persons whose names appear on the per capita roll of the Confederated Salish and Kootenai Tribes of the Flathead Reservation, Montana, as prepared for the per capita distribution as shown on the per capita roll paid in February 1959 together with all children of such members, born too late to be included on such per capita roll and prior to the effective date of this section who possess one-fourth (¼) or more Salish or Kootenai Blood or both and are born to a member of the Confederated Tribes of the Flathead Indian Reservation. subject to review by the Secretary of the Interior, the Tribal Council shall make any necessary corrections in this 1959 membership roll so that no one eligible for membership under prior constitutional provisions shall be excluded therefrom.

Section 3. Future Membership. Future membership may be regulated from time to time by ordinance of the Confederated Tribes subject to review by the Secretary of the Interior. Until and unless an ordinance is adopted any person shall be enrolled as a member who shall (a) apply, or have application made on his behalf, establishing eligibility under this provision; (b) show that he is a natural child of a member of the Confederated Tribes; (c) that he possesses one-quarter (¼) degree or more blood of

the Salish and Kootenai Tribes or both, of the Flathead Indian Reservation, Montana; (d) is not enrolled on some other reservation.

Section 4. Adoption. The Tribal Council shall have the power to enact and promulgate ordinances, subject to review by the Secretary of the Interior, governing the adoption of persons as members of the Confederated Salish and Kootenai Tribes.

Section 5. Loss of Membership. Membership in the Confederated Tribes may be lost (1) by resignation in writing to the Tribal Council; (2) by enrollment of the member with another Indian tribe; (3) by establishing a legal residence in a foreign country; (4) upon proof of lack of eligibility for enrollment, or fraud in obtaining enrollment, with due notice and opportunity to be heard and defend before the Tribal Council, subject to appeal to the Secretary of the Interior, whose decision shall be confined to the record made in such proceeding which, if supported by substantial evidence, shall be binding.

Section 6. Definitions. Wherever the term "Indian Blood" shall have been used herein or in tribal ordinances, unless the context shall require a different meaning, it shall be determined to mean the blood of either or both the Kootenai or the Salish Tribes of the Flathead Reservation.

Section 7. Current Membership Roll. The membership roll of the Confederated Salish and Kootenai Tribes of the Flathead Reservation shall be kept current by striking therefrom the names of persons who have died or have lost membership pursuant to this Constitution and adding thereto the names of persons who shall have established eligibility or been adopted. The roll so prepared shall be the basis for determining the right of persons whose

names appear thereon to share in annual per capita distribution of funds or in any other tribal property, subject to Secretarial approval.

Section 8. Rules of Procedure. The Tribal Council shall have the authority to prescribe rules to be followed in compiling a membership roll in accordance with the provisions of this article, the completed roll to be approved by the Tribal Council of the Confederated Salish and Kootenai Tribes. In case of distribution of tribal assets, the roll shall be submitted to the Secretary of the Interior for final approval as may be provided by law.

Section 9. Rights of Membership are Prospective. No person shall be entitled to receive a per capita payment or share in any other tribal assets which were distributed prior to the date of his actual enrollment.

Article III

The Tribal Council

Section 1. The governing body of the Confederated Salish and Kootenai Tribes of the Flathead Reservation shall be the Tribal Council.

Section 2. The Council shall consist of ten councilmen to be elected from the districts as set forth hereafter, and Chiefs Martin Charlo and Eneas Paul Koostahtah.

Section 3. Representation from the districts hereby designated shall be as follows: Jocko Valley and Mission Districts, two councilmen each; Ronan, Pablo, Polson, Elmo-Dayton, Hot Springs-Camas Prairie, and Dixon, one councilman each.

Section 4. The Tribal Council shall have the power to change the districts and the representation from each district, based on community organization or otherwise, as deemed advisable, such change to be made by ordinance, but the total number of delegates shall not be changed as provided for in section 2 of article III of this Constitution.

Section 5. The Tribal Council so organized shall elect from within its own number a chairman, and a vice-chairman, and from within or without its own membership, a secretary, treasurer, sergeant-at-arms, and such other officers and committees as may be deemed necessary.

Section 6. No person shall be a candidate for membership in the Tribal Council unless he shall be a member of the Confederated Tribes of the Flathead Reservation and shall have resided in the district of his candidacy for a period of one year next preceding the election.

Section 7. The Tribal Council of the Confederated Tribes of the Flathead Reservation shall be the sole judge of the qualifications of its members.

Article IV

Nominations and Elections

Section 1. The first election of a Tribal Council under this Constitution shall be called and supervised by the present Tribal Council within 30 days after the ratification and approval of this Constitution, and thereafter elections shall be held every two years on the third Saturday prior to the expiration of the terms of office of the members of the Tribal Council. At the first election, five councilmen shall be elected for a period of two years and five for a

period of four years. The term of office of a councilman shall be for a period of four years unless otherwise provided herein.

Section 2. The Tribal Council or an election board appointed by the Council shall determine rules and regulations governing all elections.

Section 3. Any qualified member of the Confederated Tribes may announce his candidacy for the Council, within the district of his residence, notifying the Secretary of the Tribal Council in writing of his candidacy at least 15 days prior to the Election. It shall be the duty of the Secretary of the Tribal Council to post in each district at least 10 days before the election, the names of all candidates for the Council who have met those requirements. Where more than two members have filed for an office a Primary Election shall be held at least 30 days prior to the General Election. Only the two candidates for each office receiving the most votes at such Primary Election shall be eligible to run for office in the General Election. Where no more than two members have filed for an office, a Primary Election will be unnecessary.

Section 4. The Tribal Council, or a board appointed by the Council, shall certify to the election of the members of the Council within 5 days after the election returns.

Section 5. The Tribal Council, or a board appointed by the Tribal Council, shall designate the polling places and appoint all election officials.

Article V

Vacancies and Removals

Section 1. If a councilman or official shall die, resign, permanently leave the reservation, or be removed from office, the Council shall declare the position vacant and appoint a successor to fill the unexpired term, provided that the person chosen to fill such vacancy shall be from the district in which such vacancy occurs.

Section 2. Any councilman who is proven guilty of improper conduct or gross neglect of duty may be expelled from the Council by a two-thirds vote of the membership of the Council voting in favor of such expulsion, and provided further, that the accused member shall be given full and fair opportunity to reply to any and all charges at a designated Council meeting. It is further stipulated that any such member shall be given a written statement of the charges against him at least five days before the meeting *at which he is to* appear.

Article VI

Powers and Duties of the Tribal Council

Section 1. The Tribal Council shall have the power, subject to any limitations imposed by the Statutes or the Constitution of the United States and subject to all express restrictions upon such powers contained in this Constitution and attached Bylaws;

(a) To regulate the uses and disposition of tribal property, to protect and preserve the tribal property, wildlife and natural resources of the Confederated Tribes, to cultivate Indian arts, crafts, and culture, to administer charity; to

protect the health, security, and general welfare of the Confederated Tribes.

(b) To employ legal counsel for the protection and advancement of the rights of the Flathead confederated Tribes and their members, the choice of counsel and fixing of fees to be subject to the approval of the Secretary of the Interior.

(c) To negotiate with the Federal, State, and local governments on behalf of the confederated Tribes, and to advise and consult with the representatives of the Departments of the Government of the United States on all matters affecting the affairs of the Confederated Tribes.

(d) To approve or veto any sale, disposition, lease, or encumbrance of tribal lands and tribal assets which may be authorized or executed by the Secretary of the Interior, the Commissioner of Indian Affairs, or any other agency of the Government, *provided* that no tribal lands shall be sold or encumbered or leased for a period in excess of five years, except for Governmental purposes.

(e) To advise with the Secretary of the Interior with regard to all appropriation estimates or Federal projects for the benefit of the Confederated Tribes, prior to the submission of such estimates to the Congress.

(f) To manage all economic affairs and enterprises of the Confederated Tribes in accordance with the terms of a charter to be issued by the Secretary of the Interior.

(g) To make assignments of tribal lands to members of the Confederated Tribes in conformity with article VIII of this Constitution.

(h) To appropriate for tribal use of the reservation any available applicable tribal funds, provided that any such appropriation in excess of $25,000 shall be subject to review by the Secretary of the Interior.

(i) To promulgate and enforce ordinances, subject to review by the Secretary of the Interior, which would provide for assessments or license fees upon nonmembers doing business within the reservation, or obtaining special rights or privileges, and the same may also be applied to members of the Confederated Tribes, provided such ordinances have been approved by a referendum of the Confederated Tribes.

(j) To exclude from the restricted lands of the reservation persons not legally entitled to reside thereon, under ordinances which may be subject to review by the Secretary of the Interior.

(k) To enact resolutions or ordinances not inconsistent with article II of this Constitution governing adoptions and abandonment of membership.

(l) To promulgate and enforce ordinances which shall be subject to review by the Secretary of the Interior, governing the conduct of members of the Confederated Tribes, and providing for the maintenance of law and order and the administration of justice by the establishment of an Indian Court, and defining its powers and duties.

(m) To purchase land of members of the Confederated Tribes for public purposes under condemnation proceedings in courts of competent jurisdiction.

(n) To promulgate and enforce ordinances which are intended to safeguard and promote the peace, safety, morals, and general welfare of the Confederated Tribes by

regulating the conduct of trade and the use and disposition of property upon the reservation, providing that any ordinance directly affecting nonmembers shall be subject to review by the Secretary of the Interior.

(o) To charter subordinate organizations for economic purposes and to regulate the activities of all cooperative and other associations which may be organized under any charter issued under this Constitution.

(p) To regulate the inheritance of real and personal property, other than allotted lands, within the Flathead Reservation, subject to review by the Secretary of the Interior.

(q) To regulate the domestic relations of members of the Confederated Tribes.

(r) To recommend and provide for, the appointment of guardians for orphans, minor members of the Confederated Tribes, and incompetents subject to the approval of the Secretary of the Interior, and to administer tribal and other funds or property which may be transferred or entrusted to the Confederated Tribes or Tribal Council for this purpose.

(s) To create and maintain a tribal fund by accepting grants or donations from any person, State, or the United States.

(t) To delegate to subordinate boards or to cooperative associations which are open to all members of the Confederated Tribes, any of the foregoing powers, reserving the right to review any action taken by virtue of such delegated power.

(u) To adopt resolutions or ordinances to effectuate any of the foregoing powers.

Section 2. Any resolution or ordinance which by the terms of this constitution is subject to review by the Secretary of the Interior, shall be presented to the Superintendent of the Reservation who shall, within ten days thereafter, approve or disapprove the same, and if such ordinance or resolution is approved, it shall thereupon become effective, but the superintendent shall transmit of copy of the same, bearing his endorsement, to the Secretary of the Interior who may, within 90 days from the date of enactment, rescind said ordinance or resolution for any cause, by notifying the council of such action: *Provided.* That if the Superintendent shall refuse to approve any resolution or ordinance submitted to him, within ten days after its enactment, he shall advise the Council of his reasons therefor, and the Council, if such reasons appear to be insufficient, may refer it to the Secretary of the Interior, who may pass upon same and either approve or disapprove it within 90 days from its enactment.

Section 3. The council of the Confederated Tribes may exercise such further powers as may in the future be delegated to it by the Federal Government, either through order of the Secretary of the Interior or by Congress, or by the State Government or by members of the Confederated Tribes.

Section 4. Any rights and powers heretofore vested in the confederated Tribes but not expressly referred to in this Constitution shall not be abridged by this article, but may be exercised by the members of the Confederated Tribes through the adoption of appropriate bylaws and constitutional amendments.

Article VII

Bill of Rights

Section 1. All members of the Confederated Tribes over the age of 18 years shall have the right to vote in all tribal elections, subject to any restricts as to residence as set forth in Article IV.

Section 2. All members of the Confederated Tribes shall be accorded equal opportunities to participate in the economic resources and activities of the reservation.

Section 3. All members of the Confederated Tribes may enjoy without hindrance freedom of worship, speech, press, and assembly.

Section 4. Any member of the confederated Tribes accused of any offense, shall have the right to a prompt, open, and public hearing, with due notice of the offense charged, and shall be permitted to summon witnesses in his own behalf and trial be jury shall be accorded, when duly requested, by any member accused of any offense punishable by more than 30 days' imprisonment, and excessive bail or cruel or unusual punishment shall not be imposed.

Article VIII

Land

Section 1. Land Transactions. subject to any limitations imposed by the Constitution and Bylaws, to any applicable Federal statute and to the approval of the Secretary of the Interior, the Tribal Council may:

(1) Purchase or receive by gift or relinquishment land or any interest therein, and may lease, exchange (with or

without the giving or receipt of other consideration), encumber, and assign tribal lands or any interest therein; and

(2) Adopt ordinances or resolutions governing any or all such transactions.

Section 2. Saving Clause. Nothing herein shall be held to impair rights heretofore acquired in any allotment or assignment held by any individual.

Article IX

Referendum

Section 1. Upon a petition of at least one-third (⅓) of the eligible voters of the Confederated Tribes, or upon the request of a majority of the members of the Tribal Council, any enacted or proposed ordinance or resolution of the council shall be submitted to a popular referendum, and the vote of a majority of the qualified voters voting in such referendum shall be conclusive and binding on the Tribal Council, provided that at least thirty percent (30%) of the eligible voters shall vote in such election.

Article X

Amendments

Section 1. This Constitution and Bylaws may be amended by a majority vote of the qualified voters of the Confederated Tribes voting at an election called for that purpose by the Secretary of the Interior, provided that at least thirty percent (30%) of those entitled to vote shall vote in such election; but no amendment shall become effective until it shall have been approved by the Secretary of the Interior.

It shall be the duty of the Secretary of the Interior to call an election on any proposed amendment, at the request of two-thirds of the Council, or upon presentation of a petition signed by one-third (⅓) of the qualified voters, members of the Confederated Tribes.

APPENDIX

****

Indian Civil Rights Act, 25 U.S.C. Section 1302

No Indian tribe in exercising powers of self-government shall –

(1) make or enforce any law prohibiting the free exercise of religion, or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble and to petition for a redress of grievances;

(2) violate the right of the people to be secure in their persons, houses, papers, and effects against unreasonable search and seizures, nor issue warrants, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the person or thing to be seized;

(3) subject any person for the same offense to be twice put in jeopardy;

(4) compel any person in any criminal case to be a witness against himself;

(5) take any private property for a public use without just compensation;

(6) deny to any person in a criminal proceeding the right to a speedy and public trial, to be informed of the nature

and cause of the accusation, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and at his own expense to have the assistance of counsel for his defense;

(7) require excessive bail, impose excessive fines, inflict cruel and unusual punishments, and in no event impose for conviction of any one offense any penalty or punishment greater than imprisonment for a term of (one year) or a fine of ($5000) or both;

(8) deny to any person within its jurisdiction the equal protection of its laws or deprive any person of liberty or property without due process of law;

(9) pass any bill of attainder or ex post facto law; or

(10) deny to any person accused of an offense punishable by imprisonment the right, upon request, to a trial by jury of not less than six persons.

Part 2

Bylaws

Article I

The Tribal Council

Section 1. The Chairman of the Council shall preside over all meetings of the Council, perform all duties of chairman, and exercise any authority detailed to him, and he shall be entitled to vote on all questions.

Section 2. The vice chairman shall assist the chairman when called on so to do, in the absence of the chairman shall preside, and when so presiding shall have all the privileges, duties, and responsibilities of the chairman.

Section 3. The Council secretary shall forward a copy of the minutes of all meetings to the Superintendent of the Reservation and to the Commissioner of Indian Affairs.

Section 4. The duties of all appointed boards or officers of the organization shall be clearly defined by resolutions of the Council at the time of their creation or appointment. Such boards and officers shall report from time to time as required to the Council and their activities and decisions shall be subject to review by the Council upon petition of any person aggrieved.

Section 5. Newly elected members who have been duly certified shall be installed at the first regular meeting of the Tribal Council.

Section 6. Each member of the Tribal Council and each officer or subordinate officer, elected or appointed hereunder, shall take an oath of office prior to assuming the duties thereof, by which oath, he shall pledge himself to support and defend the constitution of the United States – and this Constitution and Bylaws. The following form of oath of office shall be given: "I, _____, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, to carry out faithfully and impartially, the duties of my office to the best of my ability; to cooperate, promote, and protect the best interests of my Tribe, in accordance with this Constitution and Bylaws."

Section 7. Regular meetings of the Tribal Council shall be held on the first Friday of January, April, July, and October, at 9:00 a.m., at the Flathead Agency.

Section 8. Special meetings may be called by a written notice signed by the chairman or a majority of the Tribal

Council and when so called the Tribal council shall have power to transact business as in regular meetings.

Section 9. No business shall be transacted unless a quorum is present which shall consist of two-thirds (⅔) of the entire membership.

Section 10. Order of business:

(a) Call to order by chairman.
(b) Roll call.
(c) Reading of minutes of last meeting.
(d) Unfinished business.
(e) Reports.
(f) New business.
(g) Adjournment.

Section 11. It shall be the duty of each member of the Tribal Council to make reports to the district from which he is elected, concerning the proceedings of the Tribal Council.

Section 12. The Tribal council may prescribe such salaries for officers or members of the council as it deems advisable, from such funds as may be available.

Article II

Ordinances and Resolutions

Section 1. All final decisions of the Council on matters of general and permanent interest to the members of the Confederated Tribes shall be embodied in ordinances. Such ordinances shall be published from time to time for the information and education of the members of the Confederated Tribes.

Section 2. All final decisions of the Council on matters of temporary interest (such as action on the reservation budget for a single year, or petitions to Congress or the Secretary of the Interior) or relating especially to particular individuals or officials (such as adoption of members, instructions for tribal employees or rules of order for the Council) shall be embodied in resolutions. Such resolutions shall be recorded in a special book which shall be open to inspection by members of the Confederated Tribes.

Section 3. All questions of procedure (such as acceptance of Committee reports or invitations to outsiders to speak) shall be decided by action of the Council or by ruling of the Chairman, if no objection is heard. In all ordinances, resolutions or motions the Council may act by majority vote, but all matters of importance shall be fully discussed and a reasonable attempt shall be made to secure unanimous agreement.

Section 4. Legislative forms. Every ordinance shall begin with the words: "Be it enacted by the Council of the Confederated Salish and Kootenai Tribes –."

Section 5. Every resolution shall begin with the words: "Be it resolved by the Council of the Confederated Salish and Kootenai Tribes –."

Section 6. Every ordinance or resolution shall contain a recital of the laws of the United States and the provisions of this Constitution under which authority for the said ordinance or resolution is found.

Article III

Ratification of Constitution and Bylaws

This Constitution and the attached Bylaws, when adopted by a majority vote of the voters of the Confederated Tribes voting at a special election called by the Secretary of the Interior, in which at least thirty (30) percent of those entitled to vote shall vote, shall be submitted to the Secretary of the Interior for his approval, and shall be in force from the date of such approval.

MEMORANDUM OF AGREEMENT BETWEEN STATE OF MONTANA, FLATHEAD COUNTY, LAKE COUNTY, MISSOULA COUNTY, SANDERS COUNTY, CITY OF HOT SPRINGS, CITY OF RONAN, TOWN OF ST. IGNATIUS AND THE CONFEDERATED SALISH AND KOOTENAI TRIBES OF THE FLATHEAD NATION

WHEREAS, the 1993 Montana Legislature enacted Senate Bill 368, which provided for the partial withdrawal of the consent of the Confederated Salish and Kootenai Tribes of the Flathead Nation [Tribes] to Public Law 280 jurisdiction on the Flathead Reservation; and

WHEREAS, Senate Bill 368 is codified in the Montana statutes at Mont. Code Ann. § 2-1-306 (1993) which provides that the Flathead Nation may, by tribal resolution, withdraw consent to be subject to the criminal misdemeanor jurisdiction of the State of Montana [State] and that within six months after receipt of a tribal resolution withdrawing tribal consent the Governor shall issue a proclamation to that effect; and

WHEREAS, the Tribes, the State, and affected county and local governments have a mutual desire to provide for a smooth implementation of tribal reassumption of exclusive jurisdiction over misdemeanor crimes committed by Indians; and

WHEREAS, the overriding purpose of this Memorandum of Agreement [Agreement] is to provide for timely and effective law enforcement and the protection of the public safety; and

WHEREAS, this Agreement is entered into pursuant to the State-Tribal Cooperative Agreements Act, codified at Mont. Code Ann. §§ 18-11-101 through -112 and Article VI, Section 1(c) of the Constitution of the Tribes approved by the Secretary of the Interior on October 28, 1935; and

WHEREAS, the Tribes, the State, and affected local governments shall act in good faith to effectuate the specific provisions of this Agreement; and

WHEREAS, the Tribe's resolution to withdraw from Public Law 280 includes language allowing continued state misdemeanor criminal jurisdiction in limited areas as specifically delineated in the body of the agreement.

NOW, THEREFORE, BE IT RESOLVED THAT THE FLATHEAD NATION AND, THE STATE OF MONTANA, FLATHEAD COUNTY, LAKE COUNTY, MISSOULA COUNTY, SANDERS COUNTY, CITY OF HOT SPRINGS, THE CITY OF RONAN, AND THE TOWN OF ST. IGNATIUS ENTER INTO THIS MEMORANDUM OF AGREEMENT AS FOLLOWS:

I. LAW ENFORCEMENT

A. DISPATCH ASSESSMENT OF INCOMING CALLS

1. EXIGENT CIRCUMSTANCES

Upon receiving an incoming call, tribal, state, county and city dispatch officers will dispatch the nearest officer to the scene of a crime where exigent circumstances do not allow for an assessment of whether the persons involved are Indian or non-Indian.

2. ASSESSMENT OF DISPATCH CALLS

When an incoming call to dispatch is not an immediate exigent emergency, the dispatcher shall determine the:

a. nature of the call;

b. possible suspect/victims; and

c. location of incident.

3. REFERRAL TO APPROPRIATE AGENCIES

If the key parties to the incident are Indian, and it is not clear that the reported offense would be charged as a felony, state, county or city dispatchers will relay the information directly to tribal dispatch. If the key parties to the incident are Indian and tribal dispatch receives the call, tribal dispatch will contact tribal officers. If the key parties are non-Indian and tribal dispatch received the call, tribal dispatch will relay the information directly to the appropriate state, county or city dispatch officer. In either situation, the person making the call will not be told to call the other jurisdiction. The dispatchers of the respective jurisdictions shall directly relay information to the appropriate dispatch office.

4. UNCLEAR ASSESSMENT

If a clear assessment of the status of the key parties is not possible by dispatchers, direct law enforcement services will be provided by the jurisdiction receiving the call.

B. OFFICER RESPONSE TO DISPATCH CALLS

1. FIELD RESPONSE TO DISPATCH CALLS

Law enforcement officers dispatched into the field, either as the nearest officer available for exigent circumstances or as the appropriate officer due to the status of the persons involved, shall respond as immediately as possible. Once dispatched, officers shall attempt no assessment of proper jurisdiction until public safety is secured. If it is clear to the law enforcement officer that the offense committed will be charged as a felony, the officer will proceed pursuant to the authority of the jurisdiction represented. If it is unclear whether the offense will be charged as a felony or as a misdemeanor, the officer will determine the status of the suspect involved.

2. FIELD DETERMINATION OF "INDIAN"

Law enforcement officers will determine the Indian/non-Indian status of a suspect at the crime scene as soon as reasonable after providing any emergency law enforcement services and securing public safety. For purposes of the Agreement an "Indian" is a person who is an enrolled member of a federally-recognized tribe. To make such determination, the suspect will be questioned as to whether she/he is an Indian.

a. Self-identification as Indian With Proof of Enrollment

If the suspect responds in the affirmative, the officer will obtain enrollment information and call the tribal dispatch officer, who will verify the enrollment status via contacting the specified Tribe's dispatch office and requesting an enrollment verification. If the suspect's Indian

status is verified, the non-tribal officer will request tribal officer response if necessary.

b. Self-identification as Indian Without Proof of Enrollment

If the suspect claims to be an Indian to the non-tribal officer but is unable to provide enrollment information, the suspect will properly be within the jurisdiction of the responding non-tribal officer until enrollment information is secured or until a successful defense of lack of jurisdiction is raised at trial.

If the suspect claims to be an Indian to a responding tribal officer but is unable to provide verifying information, the suspect is properly within the jurisdiction of the Tribes unless a successful defense of lack of jurisdiction is raised at trial.

C. TRAFFIC STOPS

1. NON-TRIBAL OFFICER STOPS

A non-tribal law enforcement officer may stop *any* vehicle upon a reasonable suspicion of criminal activity. The non-tribal officer may also conduct a protective frisk of the suspect and the area in the suspect's immediate control, whether Indian or non-Indian, if the officer reasonably believes that the suspect may be armed with a weapon.

The non-tribal officer must then determine the Indian/non-Indian status of the suspect. If the suspect is Indian, as verified by the tribal dispatch, the officer may, either issue a citation for the alleged violation pursuant to

section D or, if the officer determines that an arrest is necessary, request response by a tribal officer.

The non-tribal officer shall have authority to detain the Indian suspect pursuant to Section E: Unavailability of an Appropriate Officer.

2. TRIBAL OFFICER TRAFFIC STOPS

A tribal officer may stop any vehicle upon a reasonable suspicion of criminal activity. The tribal officer may also conduct a protective frisk of the suspect and the area in the suspect's immediate control, whether Indian or non-Indian, if the officer reasonably believes that the suspect may be armed with a weapon.

The tribal officer must then determine the Indian/non-Indian status of the suspect. If the suspect is non-Indian, the tribal officer may either issue a citation for the alleged violation pursuant to section D or, if the officer determines that an arrest is necessary, request response by a non-tribal officer.

The tribal officer shall have authority to detain the suspect until the arrival of the non-tribal officer pursuant to Section E: Unavailability of an Appropriate Officer.

D. CITATION AUTHORITY

1. TRIBAL OFFICERS

Officers who have met tribal requirements for certification and who have been certified by the Tribes as law enforcement officers are hereby commissioned by each other party to this Agreement to exercise limited authority within those portions of the respective jurisdictions which

lie within the exterior boundaries of the Flathead Indian Reservation. These tribal officers may exercise authority limited to that necessary for issuance of citations for violations of the state traffic laws and laws regarding minors in possession of alcohol. This authority includes that necessary to collect bond for the respective jurisdiction.

When a tribal officer makes a stop upon a reasonable suspicion of a criminal violation and determines 1) that the suspect is a non-Indian and 2) that an arrest is not necessary, the tribal officer is commissioned to act as an agent of the appropriate non-tribal jurisdiction and issue a citation for violation of state traffic laws and laws regarding minors in possession of alcohol.

2. NON-TRIBAL OFFICERS

Officers who have met the necessary requirements for certification as law enforcement officers of the respective state, county and city jurisdictions and who have been certified by the respective jurisdiction are hereby commissioned by the Tribes to exercise authority within the exterior boundaries of the Flathead Reservation. These non-tribal officers may exercise authority limited to that necessary for issuance of citations for violations of the tribal traffic ordinances and ordinances regarding minors in possession of alcohol. This authority includes that necessary to collect bond for the Tribes.

When a non-tribal officer makes a stop upon a reasonable suspicion of a violation and determines 1) that the suspect is an Indian and 2) that an arrest is not necessary, the non-tribal officer is commissioned to act as an agent of the Tribes and issue a citation for violation of tribal traffic

ordinances and ordinances regarding minors in possession of alcohol.

3. CHAIN OF COMMAND

The chain of command for the law enforcement officers of the parties to this Agreement shall not be changed by the granting of authority to issue citations on behalf of a jurisdiction other than that of the officer. Officers will continue to report to and be accountable to superiors to whom they now report.

4. LIABILITY

Each party shall remain liable for the actions of their employees for purposes of this Section of the Agreement to the same extent that they are currently. No parties assume liability for employees of the other parties for actions authorized by this Section providing for citation authority.

E. UNAVAILABILITY OF APPROPRIATE OFFICER WHEN ARREST NECESSARY

1. STOP BY NON-TRIBAL OFFICER

If upon a request from a non-tribal officer, a tribal officer determines he is unable to respond to a traffic stop which necessitates an arrest of an Indian person for protection of public safety within 30 minutes of the detention of the Indian suspect, the tribal officer may authorize the non-tribal officer to arrest and transport the suspect to the Tribal Law and Order facility. Such arrest and transport in a traffic-stop situation cannot occur without the express grant of authority from the tribal officer to the non-tribal officer pursuant to section F. An arrest made

with an express grant of authority from the tribal officer includes a grant of authority to completely process the suspect for the crime.

If the traffic stop of an Indian suspect by a non-tribal officer does not warrant the arrest of the suspect, the non-tribal officer may issue a citation for the alleged violation pursuant to section D or file a report of probable cause and report of traffic violation to the tribal prosecutor's office.

2. STOP BY A TRIBAL OFFICER

If upon request from a tribal officer the non-tribal officer determines he is unable to respond to a traffic stop which necessitates an arrest of a non-Indian within 30 minutes of the detention of the non-Indian suspect, the non-tribal officer may authorize the tribal officer to arrest and transport the suspect to the county or city law enforcement facilities. Such arrest and transport in a traffic-stop situation cannot occur without the express grant of authority from the non-tribal officer to the tribal officer pursuant to section F. An arrest made with an express grant of authority from the non-tribal officer includes a grant of authority to completely process the suspect for the crime.

If the traffic stop of a non-Indian suspect by a tribal officer does not warrant the arrest of the suspect, the tribal officer may issue a citation for the alleged violation pursuant to section D or file a report of probable cause and report of traffic violation to the tribal prosecutor's office who will then forward it to the appropriate prosecutor's office.

F. ARREST AUTHORITY

1. ARREST BY NON-TRIBAL OFFICER OF TRIBAL SUSPECT

A non-tribal officer may make an arrest of an Indian person only when granted authority to do so by a tribal officer after the tribal officer indicates he is unable to assure he can be at the scene within 30 minutes of the detention of the Indian suspect, and:

a. the non-tribal officer establishes to tribal officer that probable cause for the arrest exists, or

b. when the crime by the Indian person is committed or being committed in the non-tribal officer's presence and an arrest is necessary to protect the public or preserve the evidence.

The tribal officer may give a verbal grant of authority arrest to the non-tribal officer.

2. ARREST BY TRIBAL OFFICER OF NON-INDIAN SUSPECT

A tribal officer may make an arrest of a non-Indian suspect only when granted authority to do so by a non-tribal officer after the non-tribal officer indicates he is unable to assure he can be at the scene within 30 minutes of the detention of the non-Indian suspect, and:

a. the tribal officer establishes to the non-tribal officer that probable cause for the arrest exists, or

b. when the crime by the non-Indian person is committed or being committed in the tribal officer's presence and an arrest is necessary to protect the public or preserve the evidence.

The non-tribal officer may give a verbal grant of authority for arrest to the tribal officer.

3. LIABILITY

Each party shall remain liable for the actions of their employees for purposes of this Section of the Agreement to the same extent that they are currently. No parties assume liability for employees of the other parties for actions authorized by this Section providing for arrest authority.

G. INVESTIGATIONS

1. UNKNOWN SUSPECT

a. When the suspect is unknown and exigent circumstances do not allow for an assessment of whether the persons involved in an incident are Indian or non-Indian, officers of the responding jurisdiction will stabilize the situation and take the lead in the necessary investigatory work.

b. When the suspect is unknown and it is determined that the victims are both Indian and non-Indian, the responding jurisdiction will lead the investigation with the cooperation of the other jurisdictions until the identity of the suspect is determined.

c. When the suspect is unknown and it is determined that the victim is Indian, the tribal officers will take the lead in the investigation until the identity of the suspect is determined.

d. When the suspect is unknown and it is determined that the victim is non-Indian, the non-tribal

officers will take the lead in the investigation until the identity of the suspect is determined.

2. KNOWN SUSPECT

a. When the suspect is known to be Indian, the tribal officers will take the lead in the investigation.

b. When the suspect is known to be non-Indian, non-tribal officers will take the lead in the investigation.

c. When there are multiple suspects known to be Indian and non-Indian the respective jurisdictions will each conduct investigations in preparation for separate prosecutions. However, each jurisdiction will fully cooperate with the other jurisdiction in its investigation and will share investigatory information with the other jurisdictions.

3. COST OF INVESTIGATIONS

Each jurisdiction will cover the costs of investigations conducted by its officers.

4. LIABILITY

Each law enforcement agency shall assume liability for the conduct of its officers during all investigations.

H. COOPERATIVE MEETINGS

1. COOPERATION BETWEEN LOCAL LAW ENFORCEMENT AGENCIES

At least two joint meetings of all law enforcement agencies shall occur either before or within one month of

effectuating partial retrocession. One cross-training meeting shall occur at the Tribal Law and Order Department and one cross-training session shall occur at a facility of a county or city jurisdiction.

II. CRIMINAL PROCEEDINGS

A MISDEMEANORS

1. All misdemeanor crimes committed by Indians shall be prosecuted in the Confederated Salish and Kootenai Tribal Court with the exception of those misdemeanor convictions resulting from a guilty plea, entered in state court, pursuant to a plea bargain agreement reducing a felony to a misdemeanor or the result of a conviction in state court on a lesser included offense in a felony trial.

2. The State may retain jurisdiction of Indian persons for misdemeanor crimes in the limited circumstances that they result from a reduction of a felony offense due to a lesser included offense jury instruction at trial. If probation is a part of the sentence, it may be monitored by tribal probation personnel pursuant to agreement between the Department of Corrections and Human Services and the Tribes.

3. The State may retain jurisdiction of Indian persons for misdemeanor crimes in the limited circumstance that they result from plea bargains which are negotiated before a trial verdict which reduce felony crimes to misdemeanors. If probation is a condition of the plea bargain, such probation may be monitored by tribal probation personnel pursuant to agreement between the Department of Corrections and Human Services and the Tribes.

B. CONCURRENT TRIBAL/STATE FELONY JURISDICTION

The Tribes continue to retain concurrent jurisdiction with the State over felony crimes committed by Indians but may transfer prosecution of such crimes to the State. Factors the Tribes will consider when retaining jurisdiction over felony crimes include:

1. Seriousness of crime
2. Age of Defendant
3. Criminal History of Defendant
4. Ties to the Reservation
5. Family on Reservation
6. Sentence upon conviction in state court versus actual jail time likely in tribal jail
7. Prospect of rehabilitation
8. Access to appropriate services.

The State continues to retain jurisdiction, concurrent with that of the Tribe, over felony crimes committed by Indians but may transfer prosecution of such crimes to the Tribes if warranted.

C. TRANSFER OF PROSECUTION

1. REDUCTION FROM FELONY TO MISDEMEANOR BEFORE TRIAL

When a crime is charged as a felony by the State but prosecutorial discretion necessitates a reduction to a misdemeanor before trial, the state prosecutor will inform the tribal prosecutor. After providing adequate time for the tribal prosecutor to file the charging document in tribal

court, the State will move to dismiss its action without prejudice.

2. UPGRADE FROM MISDEMEANOR TO FELONY BEFORE TRIAL

When a crime is charged as a misdemeanor in tribal court but evidence necessitates an increase to a felony before trial and the tribal prosecutor determines that the case should be transferred to the State, the tribal prosecutor will inform the appropriate county attorney. After providing adequate time for the county attorney to file the charging document in state court, the tribal prosecutor will move to dismiss its action without prejudice.

D. PROBATION

1. Probation ordered for all tribal defendants in Tribal Court shall be monitored by tribal probation personnel.

2. Probation ordered for all tribal defendants who are convicted in a state district court for a felony offense shall remain under state jurisdiction but may be supervised by tribal probation personnel pursuant to agreement between the Department of Corrections and Human Services and the Tribes. Tribal probation personnel shall fulfill reporting requirements of state jurisdictions for purposes of revocation. Such revocations shall be within state jurisdiction when the conviction and ordered probation occurred within a state jurisdiction.

E. TESTIMONY OF LAW ENFORCEMENT OFFICERS AT TRIAL

All non-tribal law enforcement officers shall abide by the subpoena power of tribal court jurisdiction and all tribal law enforcement officers shall abide by the subpoena power of state court jurisdiction. Specifically, law enforcement officers agree to provide testimony in all jurisdictions as appropriate.

F COMMUNICATION BETWEEN TRIBES AND LOCAL AGENCIES

The tribal prosecutors and the state prosecutors shall meet bi-monthly for a period of six months. At the end of the six-month period, the frequency of such meetings shall be reviewed. These meetings will allow an open exchange of information on pending cases to insure that each jurisdiction is prosecuting cases appropriate for that jurisdiction in good faith. Communication with other jurisdictions shall be on a case-by-case basis.

III. GENERAL PROVISIONS

A. JURISDICTION OF STATE COURTS ENTERING JUDGMENT PRIOR TO DATE OF RETROCESSION

Any state court issuing a judgment of conviction for a misdemeanor offense by an Indian prior to the effective date of retrocession will maintain jurisdiction over the case and the defendant, including jurisdiction to issue contempt orders, until the judgment of conviction is fully satisfied.

B. PUBLIC ACCESS TO COURT DOCKETS

Court dockets of the courts of the respective jurisdictions will be open to the public.

C. REVIEW OF PROCESS

In order that the parties to this Agreement may continue to provide cooperative and efficient law enforcement services to the people residing on the Flathead Reservation, the Attorney General for the State will convene a meeting of representatives of the participating jurisdictions no later than March 31, 1995, to review the procedures provided for in this Agreement.

D. EFFECTIVE DATE AND TERM

The Agreement shall become effective upon execution by the parties on either the date of execution or the date the Governor of Montana issues the proclamation retroceding criminal misdemeanor jurisdiction to the Tribes, whichever comes later.

This Agreement shall be in effect for a term of five (5) years from the effective date unless earlier terminated as herein provided. Prior to the expiration of this Agreement, or upon its termination, the parties may agree to the renewal of the Agreement for a term agreed upon by the parties.

E. TERMINATION AND WITHDRAWAL

This Agreement may be terminated at any time upon written consent of all parties. Any party may withdraw from this Agreement provided said party gives notice of

withdrawal to all other parties by certified mail at least 120 days prior to such withdrawal.

F. AMENDMENTS

This Agreement may be amended at any time provided said amendments are in writing and signed by all parties to the Agreement.

G. NEGATIVE DECLARATION

Nothing in this Agreement shall be deemed as a concession by any party as to any other party's jurisdictional claims or an admission of the same, or a waiver of the right to challenge such claims upon termination of the Agreement. Nothing in this Agreement shall prejudice the right of any individual to challenge the regulatory or adjudicatory jurisdiction of either party. Neither this Agreement nor the activities of the parties pursuant to this Agreement shall be deemed as enlarging or diminishing the jurisdiction or authority of any of the parties within the Flathead Reservation.

H. NOTICES

All notices and other communications required to be given hereunder by the Parties to this Agreement shall be deemed to have been duly given when delivered in person or posted by United States certified mail, return receipt requested, with postage prepaid, addressed as follows:

1. If to the Tribes:

   Chairman
   Confederated Salish and Kootenai Tribes
   P.O. Box 278
   Pablo, Montana 59855

2. If to the State:

   Attorney General
   Department of Justice
   215 North Sanders
   Helena, Montana 59620-1404

3. If to Flathead County

   Flathead County Commissioners
   Flathead County Courthouse
   920 South Main
   Kalispell, MT 59901

4 If to Lake County

   Lake County Commissioners
   Lake County Courthouse
   106 4th Ave. East
   Polson, MT 59860

5. If to Missoula County

   Missoula County Commissioners
   Missoula County Courthouse
   200 West Broadway
   Missoula, MT 59802

6. If to Sanders County

   Sanders County Commissioners
   Sanders County Courthouse
   Thompson Falls, MT 59873

7 If to the City of Hot Springs

Mayor
City of Hot Springs City Hall
Hot Springs, MT 59845

8. If to the City of Ronan

Mayor
City of Ronan
109 Second Avenue Southwest
Ronan, MT 59864

9. If to the Town of St. Ignatius

Mayor
City of St. Ignatius City Hall
St. Ignatius, MT 59865

MEMORANDUM OF AGREEMENT
BETWEEN
STATE OF MONTANA,
FLATHEAD COUNTY, LAKE COUNTY, MISSOULA COUNTY, SANDERS COUNTY, CITY OF HOT SPRINGS, CITY OF POLSON, CITY OF RONAN
AND
THE CONFEDERATED SALISH AND KOOTENAI TRIBES OF THE FLATHEAD NATION

SIGNATURE PAGE

CONFEDERATED SALISH AND KOOTENAI TRIBES

/s/ Michael T. Pablo
MICHAEL T. PABLO, Tribal Chairman

DATED 9/30/94

MEMORANDUM OF AGREEMENT
BETWEEN
STATE OF MONTANA,
FLATHEAD COUNTY, LAKE COUNTY, MISSOULA COUNTY, SANDERS COUNTY, CITY OF HOT SPRINGS, CITY OF POLSON, CITY OF RONAN
AND
THE CONFEDERATED SALISH AND KOOTENAI TRIBES OF THE FLATHEAD NATION

SIGNATURE PAGE

STATE OF MONTANA

/s/ Joseph P. Mazurek
JOSEPH P. MAZUREK, Attorney General

DATED 9-30-94

MEMORANDUM OF AGREEMENT
BETWEEN
STATE OF MONTANA,
FLATHEAD COUNTY, LAKE COUNTY, MISSOULA COUNTY, SANDERS COUNTY, CITY OF HOT SPRINGS, CITY OF POLSON, CITY OF RONAN
AND
THE CONFEDERATED SALISH AND KOOTENAI TRIBES OF THE FLATHEAD NATION

SIGNATURE PAGE

FLATHEAD COUNTY COMMISSIONERS

/s/ William D. Hedstrom
WILLIAM D. HEDSTROM

/s/ Howard Gipe
HOWARD GIPE

SHARON STRATTON

DATED 10-3-94

MEMORANDUM OF AGREEMENT
BETWEEN
STATE OF MONTANA,
FLATHEAD COUNTY, LAKE COUNTY, MISSOULA COUNTY, SANDERS COUNTY, CITY OF HOT SPRINGS, CITY OF POLSON, CITY OF RONAN
AND
THE CONFEDERATED SALISH AND KOOTENAI TRIBES OF THE FLATHEAD NATION

SIGNATURE PAGE

LAKE COUNTY COMMISSIONERS

MIKE HUTCHIN

JERRY NEWGARD

DAVE STIPE

DATED

MEMORANDUM OF AGREEMENT
BETWEEN
STATE OF MONTANA,
FLATHEAD COUNTY, LAKE COUNTY, MISSOULA COUNTY, SANDERS COUNTY, CITY OF HOT SPRINGS, CITY OF POLSON, CITY OF RONAN
AND
THE CONFEDERATED SALISH AND KOOTENAI TRIBES OF THE FLATHEAD NATION

SIGNATURE PAGE

MISSOULA COUNTY COMMISSIONERS

/s/ Fern Hart
FERN HART

/s/ Barbara Evans
BARBARA EVANS

/s/ Ann Mary Dussault
ANN MARY DUSSAULT

DATED 9/28/94

ATTEST:

/s/ Vickie M. Zeier
VICKIE M ZEIER
CLERK & RECORDER

MEMORANDUM OF AGREEMENT
BETWEEN
STATE OF MONTANA,
FLATHEAD COUNTY, LAKE COUNTY, MISSOULA COUNTY, SANDERS COUNTY, CITY OF HOT SPRINGS, CITY OF POLSON, CITY OF RONAN
AND
THE CONFEDERATED SALISH AND KOOTENAI TRIBES OF THE FLATHEAD NATION

SIGNATURE PAGE

SANDERS COUNTY COMMISSIONERS

/s/ Norman E. Resler
NORMAN E. RESLER

/s/ Cherie Hooten
CHERIE HOOTEN

/s/ Jack Marriman
JACK MARRIMAN

DATED 9-29-94

MEMORANDUM OF AGREEMENT
BETWEEN
STATE OF MONTANA,
FLATHEAD COUNTY, LAKE COUNTY, MISSOULA COUNTY, SANDERS COUNTY, CITY OF HOT SPRINGS, CITY OF POLSON, CITY OF RONAN
AND
THE CONFEDERATED SALISH AND KOOTENAI TRIBES OF THE FLATHEAD NATION

SIGNATURE PAGE

CITY OF HOT SPRINGS

/s/ Irwin D. Bangen, Mayor
IRWIN D. BANGEN, Mayor

DATED 9/30/94

MEMORANDUM OF AGREEMENT
BETWEEN
STATE OF MONTANA,
FLATHEAD COUNTY, LAKE COUNTY, MISSOULA COUNTY, SANDERS COUNTY, CITY OF HOT SPRINGS, CITY OF POLSON, CITY OF RONAN
AND
THE CONFEDERATED SALISH AND KOOTENAI TRIBES OF THE FLATHEAD NATION

SIGNATURE PAGE

CITY OF RONAN

Signed under protest
/s/ George Atkinson
GEORGE ATKINSON, Mayor

DATED 9-30-94

MEMORANDUM OF AGREEMENT
BETWEEN
STATE OF MONTANA,
FLATHEAD COUNTY, LAKE COUNTY, MISSOULA COUNTY, SANDERS COUNTY, CITY OF HOT SPRINGS, CITY OF POLSON, CITY OF RONAN
TOWN OF ST. IGNATIUS
AND
THE CONFEDERATED SALISH AND KOOTENAI TRIBES OF THE FLATHEAD NATION

SIGNATURE PAGE

TOWN OF ST. IGNATIUS

/s/ Sam Rouillier
SAM ROUILLIER, Mayor

DATED 10-4-94

State of Montana

Proclamation

WHEREAS, the State of Montana obligated itself to assume criminal jurisdiction over Indians on the Flathead Indian Reservation in accordance with the consent of the United States given by the act of August 15, 1953, 67 Stat. 590, and 1963 Mont. Laws, ch. 81, § 1; and

WHEREAS, the Confederated Salish and Kootenai Tribal Council adopted Ordinance 40A (revised) granting the State of Montana permission to assume concurrent jurisdiction over certain subjects, including the extension of the state criminal laws over Indians; and

WHEREAS, the State of Montana, through the enactment of 1993 Mont. Laws, ch. 542 (codified at Mont. Code Ann. § 2-1-306), provided that the Confederated Salish and Kootenai Tribes could, through tribal resolution, withdraw consent to be subject to the criminal misdemeanor jurisdiction of the State of Montana; and

WHEREAS, the Confederated Salish, and Kootenai Tribal Council recognizes the State of Montana will continue the exercise of concurrent felony criminal jurisdiction over Indians on the Flathead reservation; and

WHEREAS, on April 1, 1994, the Confederated Salish and Kootenai Tribal Council passed Resolution No. 94-123, withdrawing tribal consent allowing the State of Montana to exercise concurrent jurisdiction over Indians committing misdemeanor criminal offenses within the external boundaries of the Flathead Indian Reservation; except, to

the extent that the State of Montana needs permission from the Confederated Salish and Kootenai Tribes to negotiate plea bargains of felony charges resulting in misdemeanor convictions; and to the extent necessary to allow state courts to provide appropriate jury instructions in felony trials which would include conviction on "lesser included misdemeanor offenses."

NOW, THEREFORE, I, MARC RACICOT, Governor of the State of Montana, do hereby proclaim that the State of Montana retrocedes to the United States all jurisdiction over Indians committing misdemeanor criminal offenses within the external boundaries of the Flathead Indian Reservation, except to the extent that the State of Montana negotiates plea bargains of felony charges resulting in misdemeanor convictions, and to the extent the courts of the State of Montana provide appropriate jury instructions in felony trials which would result in conviction of a lesser included misdemeanor offense.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the GREAT SEAL OF THE STATE OF MONTANA to be affixed. DONE at the City of Helena, the Capital, this *thirtieth* day of *September*, in the year of our LORD, one thousand nine hundred and *ninety-four*

/s/ Marc Racicot
MARC RACICOT
Governor of Montana

ATTEST:

/s/ Mike Cooney
MIKE COONEY